

P-413/C-91-9 ORDER REQUIRING REFUND AND TARIFF MODIFICATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of a Complaint
Against Lakedale Telephone
Company's Charges for Semi-
Public Message Service

ISSUE DATE: October 31, 1991

DOCKET NO. P-413/C-91-9

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TARIFF MODIFICATION

PROCEDURAL HISTORY

I. Proceedings to Date

On December 5, 1990 Intelliphone, Inc., an authorized provider of coin-operated telephone service, filed a complaint with the Department of Public Service (the Department) alleging Lakedale Telephone Company (Lakedale or the Company) in Annandale, Minnesota was charging excessive rates for customer-owned pay telephone service. The Department investigated the complaint and, on May 7, 1991, filed a report and recommendation.

The Department reported it believed Lakedale's customer-owned pay telephone rates were excessive as applied to Intelliphone because, due to the nature of Intelliphone's equipment, the company was being charged two full message units for each local call, two for each 1+ call, and three for each 0+ call. Companies with conventional equipment would be charged only one message unit for each of these calls.

The Company responded to the Department's report and recommendation on May 17, 1991. The Company denied that its rates were excessive and claimed that Intelliphone's equipment imposed costs on the Lakedale system which justified the higher billings. The Department responded to Lakedale's filing on June 13, 1991 and Lakedale to the Department's on June 19, 1991.

The matter came before the Commission on October 9, 1991.

FINDINGS AND CONCLUSIONS

II. Legal and Factual Background

A. Intelliphone

The pay telephone involved in this case is equipped with computer chips giving it "Store and Forward" capability. Store and Forward

technology was developed only recently.¹ Payphones using the technology work differently from conventional payphones. They can store billing information, and they can be programmed to automatically do things which normally require an operator.

For example, when a customer makes a 0+ call from a Store and Forward payphone, the payphone itself automatically dials a 1-800 number to verify creditworthiness, then redials the number the customer wants. Similarly, for a 1+ call, the payphone first dials the 1-800 number, but completes the call without redialing. Local calls also are processed through the automated system; after the local number is entered, the telephone "hangs up" for a split second to determine how to route the call, which is then completed.

Lakedale's switching equipment, which is scheduled for replacement soon, cannot distinguish between these automated functions and completed calls. Since Lakedale's pay telephone tariff contains both a flat element (1.5 times the business rate) and a usage sensitive element, it charges Intelliphone as if each function were a completed local call. Therefore, 0+ calls are billed as if they were three local calls; 1+ and local calls are billed as if they were two. Similarly, local calls which are unanswered or which are made to busy numbers are billed as if they were two completed calls.

Because of this billing arrangement, Intelliphone is unable to make a profit. It will be forced out of business if the tariff is allowed to stand. Currently, Intelliphone is Lakedale's only competitor in the Annandale pay telephone market.

B. Lakedale's Tariff

Lakedale's customer-owned pay telephone service tariff was first filed in 1987, in response to Federal Communications Commission and Public Utilities Commission decisions permitting competition in the pay telephone industry. Like most independent companies filing tariffs at that time, Lakedale patterned its tariff after U S WEST's (then, Northwestern Bell). U S WEST charged either 1.5 times the business rate, or the straight business rate plus a per-call fee, depending upon whether or not it could measure calling in a particular exchange. Lakedale incorporated both aspects of U S

¹ The use of Store and Forward technology has not been approved. The Commission will examine whether Store and Forward is in the public interest, and if so, what regulatory safeguards may be required, in an ongoing investigatory docket, Docket No. P-999/CI-91-22. In the mean time, some pay telephone certificate holders, like Intelliphone, may have been using the technology without knowing it did not have Commission approval. Intelliphone will be subject to any Order issued in Docket No. P-999/CI-91-22. The Commission will not address Intelliphone's use of Store and Forward technology in this case, except to acknowledge that it is Store and Forward technology that causes Lakedale to bill Intelliphone two or three message units for each call.

WEST's tariff, charging 1.5 times the business rate plus a fee for each completed local call. In September of 1990, after Intelliphone complained of being charged for uncompleted calls, Lakedale filed a tariff change to remove the word "completed" from its tariff, to allow it to charge a fee for each local call, whether or not completed.

Lakedale's customer-owned pay telephone tariff has never been subjected to serious scrutiny. As an "independent telephone company," Lakedale is allowed to put its rates into effect upon filing without Commission approval. Minn. Stat. §§ 237.01, subd. 3; 237.075, subd. 9 (1990). The Company is still subject to the "fair and reasonable rates" requirement of the Telecommunications Act, however, and its rates can be amended by the Commission in a complaint proceeding like the present one. Minn. Stat. §§ 237.06; 237.081 (1990).

III. Commission Action

The Commission finds that Lakedale's rates for customer-owned pay telephone service are unfair and unreasonable. The Commission will require the Company to make a refund to Intelliphone and will revise the Company's customer-owned pay telephone tariff to establish just and reasonable rates under Minn. Stat. § 237.081, subd. 4 (1990).

Lakedale's present rates are unfair and unreasonable because they result in double recovery of local telephone company costs for toll calls, excessive rates for local calls, and the elimination of competition in the local pay telephone market.

A. Double Recovery of Local Costs for Toll Calls

For toll calls made from Intelliphone's payphone, Lakedale charges a message unit when the caller picks up the phone and enters a digit, when the phone automatically dials the 1-800 credit verification number, and, for 0+ calls, when the phone redials the number in 1+ format. Lakedale receives access charge revenues from interexchange carriers for the 1-800, 1+, and 0+ calls.

Access Charges are paid to local telephone companies by interexchange carriers for the use of local facilities. These charges were carefully set to provide full recovery of all local costs attributable to toll service. To charge an additional usage-sensitive fee is doublecharging on its face. Lakedale's message unit charges for toll calls must therefore be eliminated.

B. Two Message Unit Fees for Local Calls

Lakedale also charges two message unit fees for each local call, because its equipment reads Intelliphone's method of processing local calls as two calls. (Intelliphone's equipment momentarily "hangs up" to determine how to process the local call.) This is not as clear a case of doublecharging as charging a message unit for toll calls. Lakedale contends that Intelliphone's "hanging up"

process imposes higher costs on its system than the process used by conventional pay telephone equipment. This may be true. Lakedale declined to supply a cost study identifying and quantifying those costs, however.

The Commission finds that charging twice as much for a local call processed with Intelliphone's technology as for a local call processed with conventional technology is excessive. Even if there are additional costs associated with Intelliphone's method of processing local calls, they cannot possibly be as high as the costs of another stand-alone local call. The Company therefore cannot reasonably use the costs of a local call as a proxy for the costs of the additional step required to process Intelliphone's local calls.

C. Public Policy and Fairness Concerns

Protecting competition is a relatively new goal in telecommunications regulation. In cases in which competition has been determined to be in the public interest, however, protecting competitors from unfair use of monopoly power is an important regulatory responsibility.

Here, customer-owned pay telephones have been found to be in the public interest. Lakedale filed a tariff stating its rates for customer-owned pay telephones. Under the terms of the tariff, those rates applied only to completed local calls. In reliance upon stated public policy and duly filed tariffs, Intelliphone made an investment to serve the Annandale pay telephone market.

Lakedale then amended its tariff in a manner which more than doubled Intelliphone's costs. Most of the increase (the toll portion) was clear doublecharging. The Company declined to provide cost support for the remainder of the increase, preventing the Commission from determining what portion, if any, might be appropriate. Under these circumstances it is clear that the Company's tariff must be reformed.

D. Amendment of the Tariff; Refund

Since Lakedale cannot measure local usage, it is inappropriate for its customer-owned pay telephone tariff to include a usage-sensitive element. Applying the usage-sensitive element has resulted in double billing for local calls and double recovery of local costs for toll usage. There is no alternative to a flat customer-owned pay telephone rate at present.

The next issue is what flat rate to apply. Without cost information (which Lakedale declined to supply), the Commission is left with setting the rate by comparison with other companies' rates. This is not unprecedented, however, in regard to discrete services, like customer-owned pay telephone service, and similar companies, like independent telephone companies. In fact, customer-owned pay telephone rates were originally set in this manner for independent telephone companies.

The Commission will therefore set Lakedale's customer-owned telephone service rate at 1.5 times the business rate. This is the rate charged by most telephone companies that cannot measure local usage and, by all indications, it will cover Lakedale's customer-owned pay phone costs and provide significant contribution. Should Lakedale believe this is not so, the Company is encouraged to file cost information demonstrating that a different rate is more appropriate.

Finally, the Commission will require Lakedale to refund to Intelliphone all amounts paid in excess of tariffed rates in effect on June 1, 1990, i.e., 1.5 times the business rate plus message units for completed local calls. The Company could determine the amount of the refund by consulting Intelliphone's records. In the alternative, the Company may refund the difference between amounts paid by Intelliphone and the new flat rate of 1.5 times the business rate.

ORDER

1. Within ten days of the date of this Order, Lakedale Telephone Company shall file amended tariff pages changing its rate for semi-public message service to a flat rate of 1.5 times the regular business rate.
2. Within 20 days of the date of this Order, Lakedale Telephone Company shall make a refund to Intelliphone, Inc. in the amount of the difference between amounts paid by Intelliphone and the amounts Intelliphone would have paid under the tariff in effect on June 1, 1990. In the alternative, Lakedale may refund the difference between amounts paid by Intelliphone, Inc. and the new tariffed rate of 1.5 times the business rate.
3. Within 30 days of the date of this Order, Lakedale Telephone Company shall file a report detailing the amount of the refund, how it was computed, and the date on which it was made.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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